

Commission policy and no basis for predicting that Glendale's permit would likewise be issued late.

36. Also without merit is Glendale's effort to distinguish Chicagoland TV Co., 8 RR 2d 758 (Rev. Bd. 1966). As Glendale correctly notes, the availability of the proposed site in that case depended on the occurrence of certain anticipated events. However, the Board did not express doubt about whether those events would occur. The Board's concern in essence was how long the process would take -- specifically that the applicant might receive its construction permit in late 1966 or 1967 but would not get access to the site until 1968. Id. at 761, n. 5. From this it is clear that if an applicant's proposed site will not be available when the applicant receives its permit, or at least reasonably soon thereafter, the applicant lacks reasonable assurance of site availability. This is an obvious corollary to the policy announced when the Commission extended the construction period for television stations from 18 to 24 months, namely, that "[i]f stations are not constructed within the allowed time, permittees will lose their authorizations." Broadcast Construction Periods, 59 RR 2d 595, 597 (1985). See, also, Construction Period for Broadcast Stations, 19 RR 2d 1578, 1580 (1970) ("failure to construct promptly [is] contrary to the public interest").

37. Finally, Glendale has no basis for recklessly charging TBF with abuse of process in raising the question of its two-

year holdover right. Opposition, pp. 9-11. The Commission's concern in Alabama Citizens for Responsive Public Television, Inc., 69 FCC 2d 1062 (1978) ("AETC"), on which Glendale relies, was primarily that the incumbent had actively undertaken an "eleventh-hour renegotiation of the lease terms" for the purpose of denying its competitor access to the site. Id. at 1071. In other words, in anticipation of competition, the incumbent took steps to secure a new lease arrangement that would freeze its competitor out of the site. Here, TBF has taken no such steps. In fact, TBF had nothing to do with negotiating the two-year holdover provision in the tower lease. It inherited that provision when it acquired WHFT(TV) from the prior licensee in 1980 and assumed the lease. The lease (with its two-year holdover provision) was originally executed in 1973 by the prior licensee and the tower owner.^{17/} Thus, the terms of the lease were established, not only long before this proceeding began, but long before TBF even became licensee of WHFT(TV) and a party to the lease. Plainly, TBF has not acted improperly in any way.

38. It is also significant that when AETC was decided, renewal challengers enjoyed a presumption that the incumbent's site would be available to the challenger if the challenger prevailed in the case. George F. Cameron, Jr. Communications, 71 FCC 2d 460, 467 (1979). Commission policy has now changed,

^{17/} See Tower Space Lease, submitted as Attachment 3 to TBF's Motion To Dismiss.

and Glendale enjoys no such presumption. Prevention of Abuses of the Renewal Process, 4 FCC Rcd 4780, 4788-89 (1989), aff'd, 5 FCC Rcd 3902, 3904-05 (1990). Moreover, the Commission expressly has no policy requiring a defeated incumbent to make its assets available to the successor licensee KOED, Inc.

40. Accordingly, as the Bureau recommends, Glendale's application should be dismissed without hearing.

Respectfully submitted,

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June 17, 1993

ATTACHMENT 1

**Signature Page of Offer Letter Showing No
Signature or Acceptance by Glendale
Broadcasting Company -- Offer Expired
January 31, 1992**

Sincerely,

TAK BROADCASTING CORPORATION

James L. Sorensen
Tower Manager -- Chief Engineer

cc: Mr. Tak
Mr. Harris

ACCEPTED:

For Glendale Broadcasting Corporation

Witness:

Title

For TelSA, Inc.

Witness:

Ernest R. Naly 12/21/91

President
Title

copy mailed 12/21/91 to TALK B'co

CERTIFICATE OF SERVICE

I, Joan M. Trepal, a secretary in the law firm of Mullin, Rhyne, Emmons and Topel, hereby certify that on this 17th day of June, 1993, copies of the foregoing "Reply To Opposition To Motion To Dismiss Mediation" was sent by first class mail.